UTAH SCHOOL LAW UPDATE

Utah State Office of Education

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Keep the Doors Open

In the last month or two, the State Board, some schools, and legislators have been questioned about their decision-making processes—which makes this an opportune time to review the state's open meetings law.

While the discussions mentioned have not all centered on the Open and Public Meetings Act, the central question is usually whether the decision making process followed correct procedures. Making that determination is easier when decisions are offered, discussed, and voted on in the public.

Which is one of the primary reasons state's have adopted open meetings laws.

Utah's law requires that all meetings of public bodies be open, with a few exceptions.

The exceptions allowing for a closed meeting include: [a] discussion of the character, professional competence, or physical or mental health of **an individual**;
(b) "strategy sessions to discuss **collective bargaining**;"
(c) "strategy sessions to discuss **pending or reasonably imminent litigation**;
(d) "strategy sessions to discuss the **purchase, exchange, or lease of real property** when public discussion of the transaction would disclose the appraisal or estimated value of the property and prevent completion of the transaction on the best possible terms for the public entity;
(e) "strategy sessions to discuss the **sale of real property** that would disclose designated information, prevent the public entity from completing the sale on the best possible terms and when the terms of the sale will be publicly disclosed before the public body approves the sale;

(f) "discussion regarding the **deployment of security personnel, devices, or systems**;
(g) "**investigative proceedings regarding allegations of criminal misconduct**."

Legislators, boards, schools/districts, and school committees get into trouble when they try to stretch the boundaries of the exceptions to close meetings. What all public bodies need to remember when deciding to close a meeting is that the law favors openness and the exceptions are designed to protect real privacy interests or the best interests of the public, not to protect the public body from public discussions of controversial topics. The law presumes that the public's business will be done in public.

Further, a public body may not take final action in a closed meeting. A final motion and vote must be taken in open session.

This does not mean that a decision to terminate a teacher after a closed discussion regarding a teacher's character or competence must reveal sensitive information. The action taken in the open meeting can be based on a motion to discharge a named teacher "for reasons authorized by law." Courts have recognized this type of statement as adequate to inform the public of the reason for the action while protecting the privacy rights of the individual.

Whether holding an open or closed meeting, the public body must also provide at least 24-hours notice of the time, place, and items for discussion at the meeting. Failure to provide proper notice to the public may be grounds for voiding any actions taken at the meeting.

UPPAC CASES

- *The Utah State Board of Education reinstated Heidi Arias' educator license.*
- *The State Board suspended John Scot Denhalter's educator license for one year for showing middle school students a video depicting a Russian Roulette competition.*
- *The Board reinstated Richard Kautz' educator license.*
- *The Board suspended Brian Burningham's educator license for two years based on his failure to disclose an existing license suspension in Georgia for engaging in inappropriate email exchanges with a student.*

Eye on Legislation

Thus far, education bills in the 2009 Legislative session center on perennial favorites—class size reduction, math and science initiatives, and amendments to the charter school law—clean-up of prior problem areas, and solutions for newer issues, such as school district splits and equalized funding.

Newly elected-Sen. Karen Morgan, D-Cottonwood Heights, will continue her quest for class-size reduction in kindergarten-third grade, a battle she fought for many years as a state representative. She is also wading into the equalization debate with proposed legislation.

Sen. Chris Buttars, R-West Jordan, is also interested in school funding and will propose a legislative task force on the issue. Rep. Wayne Harper, R-West Jordan, has similarly requested a bill entitled "Public School Funding."

Rep. Gage Froerer, R-Huntsville, will offer amendments for the Charter School Governing Board and Rep. Carol Moss, D-Holladay, and Rep. Rhonda Menlove, R-Garland, will attempt to fix the convoluted election process for State School Board members.

Teachers will receive attention again this year. Rep. Lynn Hemingway, D-Salt Lake City, will try to establish a mortgage loan program for new teachers—admittedly a tough sell in this economy. Rep. Carl Wimmmer, R-Herriman, hopes to impose criminal charges on teachers who provide too much information in health classes, and Rep. Kory Holdaway, R-Taylorsville, and Sen. Mark Madsen, R-Lehi, are proposing amendments to the grant program for Board-certified teachers.

Rep. Eric Hutchings, R-Kearns, and Rep. Wimmer will both propose changes to the educator licensing statute. These, and all of the other bills mentioned, are still in the drafting process, so no text is available to provide any clues about the actual changes. This also means those with expertise in Utah education issues will not be able to provide any input on the bills until the 45-day session begins.

A few brave souls may attempt to create new programs, presumably with little or no appropriations. Sen. Howard Stephenson, R-Draper, for example, proposes "Student-centric learning Centers" and a "Math Education Initiative." Rep. Kory Holdaway proposes a "Utah Youth Advisory Council Act."

One final note, Sen. Mark Madsen proposes to inventory all art works owned by state agencies and schools districts. As currently defined, this seems to include everything from the Monet in the district basement to the elementary school's multiple classroom works of handprint art.

UPPAC Case of the Month

Cases of educators attempting to view or viewing pornographic images on their school computers continue to be among the more common Educator Standards violations addressed by the Professional Practices Commission.

Time after time, the Commission hears one of two excuses—students did it or the educator clicked on something inadvertently and couldn't get the images to stop popping up.

Neither excuse has been found credible in UPPAC hearings. While both explanations may be valid for a few images, reasonable educators will call an IT person or inform a supervisor if pornographic images continually "pop-up" on their computers. And student access to teacher computers is frowned upon in most school districts so smart educators use password protection.

The excuses are even less credible to the panel when the cases involve hundreds of images. How students could access that many pornographic images, usually in a week or month long time span, without the educator noticing has never been believably answered in any of the cases where the educator blamed students.

Nor has an educator been able to explain why he would sit through hundreds of pop-up ads during the school day without ever informing anyone that there might be a problem.

In UPPAC's experience, students accessing pornography or pop-ups are limited problems involving a picture or two and are handled through the school.

In fact, most student attempts are blocked by the district filters.

Educators looking for porn at school or on school computers may also be blocked, but some have found ways around the filters. When a search is sophisticated enough to circumvent filters, occurs late at night or on weekends, and involves hundreds of pictures, chances are students had little or nothing to do with the access.

Viewing pornography at school or on a school computer violates school policies, State Board rule, and may be charged as a misdemeanor criminal offense.

An educator caught with porn at school, regardless of the medium, will be out of a job and out of the teaching profession—at least for a time.

(FYI: Taking the school laptop home to look at porn will still cost the educator his job and license.)

Recent Education Cases

Patrick v. Great Valley School District (3rd Cir. 2008). A school district was not liable, but a coach could be personally liable, for injuries sustained by a middle school wrestler.

The coach paired the 152 pound novice wrestler with a 240 pound opponent and told the two to "live wrestle" (expend maximum effort as if in a competitive match). The smaller student was injured when the heavier wrestler landed on his leg.

The coach had paired the student with larger students on three other occasions, despite athletic association guidelines requiring wrestlers to compete in their own weight class or one above. The injured student's opponent was three classes above him.

The court found that the school did NOT have a policy or practice supporting the coach's decision and, therefore, was not liable to the student. The coach, on the other hand, might be liable if the student could show that the coach was deliberately indifferent to the clearly unreasonable risks to the student.

Dawn L. v. Greater Johnstown Sch. Dist. (D. Ct. PA 2008). The school district was found liable for $28,000 in total damages plus litigation costs to a student and her parents based on the district's failure to take reasonable measures to protect an 11 year old student from known sexual harassment and its subsequent retaliation against the parent.

The parent became aware of the harassment from notes passed between her daughter and another student. The parent brought the notes to the attention of the school principal, district superintendent, and other school personnel. The response of a vice principal—"lesbian activity in the [school] bathroom, and I missed it"—was indicative of the school's response.

The school's only efforts to protect the 11-year old was to suggest she be treated as a homebound student. The parents, in frustration and out of concern for their daughter's safety, agreed to a homebound placement. The district sent a teacher who was unwilling or unable to comply with the student's IEP requirements so the parents returned their child to school after 2 months of homebound instruction. The harassment then continued.

The police finally charged the 14-year old harassing student and she was placed on 12 months probation by the court. She continually violated the probation, attending school functions she was not allowed to be at and which the school was expected to keep her from or inform the police if she attended.

Instead, the school spent most of its efforts harassing the parents and the victim's younger siblings, despite the parents' years of volunteer service at the school.

The court spent a large portion of its opinion noting the complete lack of credibility of all school and district witnesses and expressing amazement at the unreasonableness of the official responses to the situation at every level.

The court awarded $27,000 to the student to cover costs for private school tuition incurred by the family when the parents finally moved the child out of the district and for her emotional injuries caused by the district's failure to respond to the harassment. The mother received an additional $1,000 based on the district's act of retaliation against her. The district was also charged with all litigation costs, other than attorneys' fees.

Your Questions

Q: Our school newspaper wants to print a story about the discipline actions taken against some students. The students plan to change the names of the students, but the incidents are pretty well known. Per state and federal law, we have not provided any information about the final discipline actions taken against the students, but the newspaper seems to have most of that information anyway. May the paper run the story?

What do you do when. . . ?

A: If this is a school-sponsored newspaper, printing a story about identifiable students regarding non-public information would be a violation of the federal Family Education Rights and Privacy Act.

Newspapers sponsored by the school are subject to some editorial control by the school. That includes measures taken to prevent a violation of law by the paper. Printing details of a student discipline case would violate FERPA.

Changing the names of the students where the culprits and events are well known does not solve the problem. The Family Policy Compliance Office, which investigates FERPA violations, has stated on several occasions that FERPA is violated if the individual student being discussed can be identified with minimal

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The Utah Professional Practices Advisory Commission, as an advisory commission to the Utah State Board of Education, sets standards of professional performance, competence and ethical conduct for persons holding licenses issued by the Board.

The Government and Legislative Relations Section at the Utah State Office of provides information, direction and support to school districts, other state agencies, teachers and the general public on current legal issues, public education law, educator discipline, professional standards, and legislation.

Our website also provides information such as Board and UPPAC rules, model forms, reporting forms for alleged educator misconduct, curriculum guides, licensing information, NCLB information, statistical information about Utah schools and districts and links to each department at the state office.

Your Questions Cont.

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effort. That appears to be the case with the newspaper story and, therefore, running the story would violate the students' privacy rights and federal FERPA.

Q: A student who took an Electronic High School class in 8th grade does not want the credit counted on her transcript because she did poorly. May students pick and choose whether grades and credits obtained through EHS apply?

A: No. Students who attend EHS classes through their school may not choose to have the credit/grade eliminated from the transcript, unless a district policy specifically permits it.

Where the school facilitates the access to the program and must approve the student's enrollment in the course, the EHS course should be treated like any other course taken at the school, even if the course is not otherwise offered at the school. As such, the grade/credit is earned and the school is required to include it in the transcript.

It is also worth noting that grades/transcripts may be about the student, but belong to the school.

Q: A parent removed a student from our district one month ago because the family was moving into another district. We have not received any requests for records from the receiving district. Is the receiving district under any obligation to notify us when the student enrolls and request records?

A: The district receiving a student from another district, for whatever reason, should notify the sending district when the student comes in for several reasons.

Under Utah law, the sending district is required to provide student records within thirty days of a request from the receiving district. If the receiving district failed to notify the sending district of the student's enrollment, the time for sending records does not begin to run until the notice is sent.

The receiving district should also notify the sending district in a timely manner to ensure the student is receiving required educational services and create accurate Average Daily Membership counts to fund those services.